CHICAGO NEW CHARTER MOVEMENT—ITS RELATION TO MUNICIPAL OWNERSHIP

By Hon. Milton J. Foreman,
Chairman, Chicago Charter Convention.

At the November election, 1907, a law providing a new city charter for the municipality of Chicago, embracing important municipal ownership and home rule features, was submitted to the voters of the city and rejected by them. This law had been prepared by what was known as the "Chicago Charter Convention," a body composed of representatives of the different interests concerned. The proposed new city charter was the result of long and tedious discussion and many compromises. It did not represent the ideal, but was presumed to embody the practical. Its defeat was accomplished by the intrusion of subsidiary issues and not by reason of any defect in it as a working organic law for the municipality.

To convey a philosophical comprehension of the new charter movement, it is necessary first to explain the defects of the Chicago local government system which the promoters of the new charter hoped to ameliorate, if not entirely remedy. The state constitution of Illinois, adopted in 1870, avoiding the then existing abuses of special legislation, was made to embrace a drastic provision inhibiting legislation of a special character. This amounted to saying that there should be but one general incorporation law for the cities of the state. No latitude was given to the general assembly in making laws to differentiate, as was needed, according to the population of cities. At the time the incorporation law was enacted the City of Chicago embraced, approximately, one-tenth of the population of the State of Illinois. A few years after, finding its special charter inadequate to its requirements, it voluntarily relinquished it, and stepped upon the general incorporation act. At the time this was done the population of Chicago was somewhat near one-eighth of that of the state. From this small relative proportion, Chicago has grown until at the present time its population is nearly one-half that of the State of Illinois. With growth in number the people of Chicago have found, more and more, that the provisions

of the general incorporation act are inadequate to its urban requirements. Efforts to change that law so that it would meet the necessities of a great metropolis have encountered great opposition, because any change made in the law for the purpose of accommodating Chicago must also apply to cities of the very smallest class. This condition of things was oppressive, not only to the people of Chicago, but also to those of the minor cities of Illinois. Both classes of cities were bound together, hard and fast, by a rigid constitutional requirement, which compelled them to travel in the same harness at the same pace, without regard to what their natural conditions might demand. Such laws as were enacted were grotesque compromises, efforts at averages, somewhat such as might have resulted from an attempt to make a suit of clothes that would fit both a giant and a child.

Another condition sought to be remedied was that arising from the fact that Chicago, owing to the requirements of the present state constitution, embraces within its territorial area numerous municipal governments which do not always co-operate, which are sometimes at direct conflict, and which, to a great extent, duplicate civic functions. I will not attempt to discuss these in detail any further than to enumerate them so that the reader may form a proper basic idea of the consolidation which the Charter Convention hoped to accomplish.

First, there was the City of Chicago, existing, as I have explained, under the general incorporation act. The County of Cook, which could not be changed without a constitutional amendment, embraced the City of Chicago entire, but had a large territorial area outside of the city limits. The sanitary district of Chicago is a municipality erected for the purpose of providing sanitary drainage for Chicago and contiguous urban territory, and is a taxing body entirely independent of the other municipalities embraced wholly or partly within Chicago. The territorial limits of the sanitary district are not coterminous with those of Chicago, or of Cook County. In addition to the municipalities alluded to, there are also in Chicago, or were until a recent date, town governments, having the same characteristics as the towns of the most rural portions of the state. Not long ago these municipalities were abolished as far as was found possible. But the fact that the parks, another sort of municipal government, were in part pre-

dicated upon the co-operation of park and town officials, and because there remained fragments of town debts, it was necessary to preserve the town governments so far as these particular functions were concerned.

A third condition which, by the adoption of a new charter, Chicago hoped to escape, was the limitation upon the city's bonded debt creating powers. Under the constitution of the State of Illinois local indebtedness is not permitted to exceed five per cent upon the taxable value of the property within the municipality creating the debt. At the time this condition was established, the law required that all property be valued for taxation at its full value. Since that time the legislature has seen fit to enact a law which makes the taxable value one-fifth of the full value. Our supreme court has decided that the bonded debt limit rests, not upon the full value, but upon one-fifth, or so-called "assessed" value of the property. The effect of this, it will be seen, is to limit the amount of bonded indebtedness which the municipality of Chicago can assume to one per cent upon the full value of property, subject to taxation within its limits. But while this is true in relation to the City of Chicago, it is also a fact that the County of Cook, the sanitary district, the parks and towns, and perhaps the school system, are each separately entitled to issue bonds to the extent of one per cent of the full value of taxable property within their respective territorial limits.

To escape these onerous conditions, to disentangle the complicated and embarrassing legal difficulties arising from an incongruous governmental system, to erect in its place a homogeneous local government, was the purpose of the new city charter movement.

I have alluded to the fact that the obstacles which lay in the way of Chicago's obtaining from the legislature a city charter adapted to its urban requirements, arose from the fact that the constitution of the state contains certain restrictive provisions. Therefore, the first step in the new charter movement was necessarily an amendment of the constitution whereby the general assembly would be empowered to dissociate Chicago from the rest of the state in legislation for cities. A movement which had grown apace with the increasing embarrassment arising from the city's inadequate charter took the form of an effort to procure a con-

stitutional amendment. The burden of this labor was resumed by the Chicago Civic Federation, which secured a joint resolution for the submission of a constitutional amendment. However, it is necessary to say that the amendment, as proposed by the Civic Federation, was not permitted to pass the legislature. I have spoken of that portion of Cook County which lies outside of the City of Chicago. To all intents and purposes, it has some of the aspects of a sovereign political entity, without the consent of which it was then, and probably now would be, impossible to bring about the consolidation of the city and county governments within the City of Chicago. At any rate, the amendment submitted by the Civic Federation was changed by the legislature so that it would not provide for the consolidation of the county with the city government. Acting upon the theory that half a loaf is better than none, and that, by inching along, step by step, the ultimate purpose of reform could eventually be accomplished, the change was accepted and the amendment was submitted to the people, and adopted by them at the election of 1904. This progress having been secured, it became possible to secure legislation for the City of Chicago as a separate legislative subject independent of other cities of the state. The many advantages of this amendment have not been impaired by the failure of the people of Chicago to adopt the new charter which was submitted to them. But the amendment itself does nothing in the way of actually bringing about consolidation of local governments, or increasing the bonding powers of the City of Chicago.

The general assembly which convened in 1905, after the adoption of the constitutional amendment, found itself face to face with the problem of providing a new organic law for Chicago. Further, municipal ownership was then a burning issue. Many crude and conflicting measures, as well as others deserving much consideration, were proposed at Springfield. But before consideration of them had progressed far, it became obvious that it would be impracticable for the legislature to give to the charter question that amount of attention which it imperatively demanded. There was danger that ill-advised laws might be enacted which, instead of helping, would make a bad matter worse. Out of the conflict and confusion of ideas, the collision of good and inconsiderate motives, the conviction forced itself upon each and all that Chicago, having

asked for a new charter, should itself prepare what it deemed best adapted to its needs, and having done so should lay the same before the legislature and ask for its enactment into a law. The practical effect of this conclusion was to transfer the matter from the halls of legislation at Springfield to the city council and other municipal bodies at Chicago.

During the progress of the events narrated, there rapidly developed demands from this, that and another quarter for variant and vagarious features to be engrafted in the proposed new city charter. It was obvious that the Chicago city council, like the legislature, would be unable to grapple with the multitudinous and far-reaching phases which must be considered in the formation of a new organic instrument for the city. The suggestion was made that a charter convention be organized and convened, and that to this body be committed the entire task of preparing a bill embodying a new chapter to be submitted to the general assembly for enactment into a law. The idea of a charter convention was readily accepted, and an unofficial body composed of representatives from the various municipal and state interests concerned was quickly formed.

Avoiding details, I will say that the work of this body was faithfully and expeditiously performed, and much credit is due to the intelligence, forbearance and spirit of compromise and concession manifested by the many diverse interests represented in it.

A bill embracing the new charter as formulated by the convention was sent to Springfield, and at the session of the legislature in 1907, was enacted into a law. However, as I have indicated in my explanation of the constitutional amendment, this and all other laws enacted under that amendment, before becoming valid and operative, have to be submitted to and approved by the voters.

We now come to a consideration of the proposed charter as prepared by the Charter Convention, adopted by the legislature and voted on and rejected by the people of Chicago. The amendment to the constitution of the State of Illinois, as I have already explained, made it possible for the state legislature to enact laws exclusively applicable to Chicago. Therefore, the making of the new charter was not in any way interfered with by the provision of the constitution against special legislation. A method for

consolidating the several taxing bodies in the City of Chicago, as permitted by the amendment, was not difficult to devise, and was readily provided. At the same time, when the constitutional amendment made it possible to legislate for Chicago alone, it also provided that the city's municipal indebtedness might be permitted to reach an amount equal to five per cent of the total full valuation of all taxable property within the city. But before this provision became operative, consolidation of two or more taxing bodies was declared by the constitutional amendment to be necessary. Therefore, the financial relief of the city's government was involved with, and depended upon, the success of the consolidation features. The constitutional amendment provided that in case of consolidation the municipal debt of the bodies so combining with the city should be merged with and become a part of the city's debt. The total of the existing city debt, thus consolidated and combined with the county's and sanitary district's debts the constitutional amendment required, should be deducted from the total amount which, under the amendment, the consolidated city's debt was permitted to attain. Thus, it will be seen, the total amount of debt which the municipality of Chicago might have incurred after consolidation would have been, including the debts of the consolidated and other municipalities, not in excess of five per cent of the full value of the taxable property in the city.

In addition to making it possible to increase the city's bonded debt, the new charter provided a new tax limit. Under the laws governing taxation in the City of Chicago certain limits are fixed and in relation to other taxes no limits are established. The new tax limit proposed in the charter was slightly more than the amount of taxes which were, at the time the charter was voted upon, actually being collected. But the limit fixed by the charter was very much less than the limit established in existing laws. The unfortunate shortsightedness of the public led many to the conclusion that the charter would actually increase taxes beyond what the rate might be under the old laws, and this misapprehension induced them to vote against it. Since the defeat of the charter, another tax levy has been extended, and in a large proportion of the city the taxes now actually being collected are in excess of the limit which the new charter would have established. After much contention and earnest, faithful consideration, the Charter Convention

deemed it wisest and best to incorporate in the charter for the government of primary elections, the law then prevailing under statutes throughout the state. No attempt was made by the charter makers to interfere with the general election laws of the state, and probably they would not have been able to do so if they had so essayed.

Not much change was attempted to be made in the city's civil service regulation system. Experience in the administration of the city affairs had demonstrated what had already become equally well known in other states and cities, namely, that under civil service rules removals from the service are sometimes hedged about with so many difficulties that the law is made to operate to protect the unfit as well as the fit. It is everywhere recognized that the process of securing satisfactory public servants in minor positions depends upon elimination as well as selection. The change sought to be made by the proposed city charter would have made possible the removal of unsatisfactory employees without preferring specific damaging charges against them. Persons removed in this manner would have been given opportunity to offer proof to re-establish themselves in the positions from which they were discharged.

In dealing with the question of municipal ownership and operation the Charter Convention was presented with a half-determined problem. The work of making the charter, it should be recalled, began during the latter part of the year 1906. In 1903, the legislature of Illinois had enacted a law authorizing cities to acquire, own, construct, lease and operate street railways and to provide the means therefor. This law could not become operative until it should be adopted by a majority of the voters at an election for that purpose. Chicago voted to adopt the law at its municipal election, April, 1904. From this it will be seen that the municipal government of Chicago had already in existence a law whereby it might under certain conditions, proceed to take over and operate street railways within the city limits. So far as the traction question was concerned, the Charter Convention had but little to do, but it dealt with the question of municipal ownership in relation to other public utilities. That is to say, it provided that the City of Chicago should have full power and authority to own, maintain and operate any public utility for the

use of the city. This provision included street and other intramural railways, subways and tunnels, telephones, telegraphs, gas and electric lighting, heating, refrigerating and power plants. Other features of municipal operation were provided—docks, warehouses, etc. Provision was also made for the fixing of rates and charges for service rendered by all public utility corporations. For the purpose of acquiring public utilities, or other property necessary or appropriate for the operation thereof, either by purchase, condemnation or construction, it was provided that the city might borrow money and issue negotiable bonds, pledging the faith and credit of the municipality. But it was also provided that no such bonds should be issued unless the proposition to issue them should first have been submitted to the electors of the city and approved by two-thirds of those voting thereon. As an alternative to pledging the general faith and credit of the city, the proposed charter provided that, in lieu of issuing bonds, the city might issue and dispose of interest bearing certificates which should under no circumstances be the common obligation or liability of the city, or payable out of the general fund belonging to the municipality. On the other hand, they should be payable solely out of the revenues or incomes to be derived from the public utility property for the acquisition of which they were issued. The certificates, as described, were to be in the nature of first mortgage bonds, and should constitute a lien upon all the property which they were issued to purchase. It was still further provided that no such certificate should be issued for the purchase of any public utility until after the question of their issuance had been approved by a majority of the voters voting upon the question.

While these provisions of the city charter were being prepared, the question of municipal ownership and operation of the traction properties under the general law to which I have alluded, was coming to a head in the city council. As an outcome of that matter, traction franchise extension ordinances, the antitheses of municipal ownership, were submitted to the voters of the city at the April election, 1907, and approved by them. This was in fact a negative vote as to municipal ownership. This vote, as I have said, was taken in April, 1907. It is easy to be seen, therefore, that at the November election in the same year, when the proposed new city charter was submitted to the voters, the municipal ownership ques-

tion was destined to cut rather an insignificant figure. As a matter of fact, the submission of that question by the new charter did not appear to revivify the question from its disastrous defeat in April.

The whole municipal ownership question in Chicago narrows down to this: We have on our statute books the so-called "Mueller Law," which provides that, under certain conditions, the city may take over and operate street railways. An attempt to do this resulted in defeat. It is believed that there is some legal doubt as to whether or not, under the law, the same question can be submitted again and again to the voters.

While these events have been in progress, a five-year contract has been made with the gaslight company whereby its rate has been fixed. A twenty-year franchise has been granted to the telephone company on the basis of decreased prices. Reduced prices and other regulations have been provided and accepted in case of the electric lighting companies. Thus it appears that the public utility and municipal ownership and operation questions in Chicago are, for the present at least, practically settled and at rest. Agitators are casting about for other propositions.

The most novel, and what appeared to me to be the most valuable, feature of the defeated charter was the fact that it laid a foundation for a complete system of municipal home rule in Chicago. The constitutional amendment, under which the charter was drawn, provides that no law shall become operative until it shall have been submitted to and approved by the voters of the city. From this it followed that, not only the first draft of the charter must have popular approval, but also that all changes of the charter which might afterwards be proposed, whether in the form of ordinances or in the form of state laws, which might change the charter, would be subject to referendum, that is to say, all powers which the legislature could constitutionally delegate to the city council, except as to taxation and public utilities, were delegated, and ordinances adopted under this provision would, when accepted by the voters, act as amendments to the charter. Carried out methodically and persistently, this would eventually have given to Chicago a charter practically of its own making. Not only would it have been made by the Chicago city council, but its details would have been passed upon by the people themselves. Municipal

home rule, put into effect in this manner, would have made Chicago an exception among American cities, and would have forever divorced it from legislation enacted by legislators from rural constituencies who, no matter what may be their honesty of purpose, are not qualified to devise laws for congested populations. It is true that the constitutional amendment still permits the legislature to enact laws which, on being approved by the voters of Chicago, will become operative. Such laws may be enacted hereafter, but they will not be part of a homogeneous system of home rule as would have been the case if the city charter had first been adopted as a nucleus.

I now come to perhaps the most complicated and embarrassing obstacle which the Charter Convention encountered. I refer to the matter of saloon regulation. I have already stated that the constitutional amendment provided that any and all laws which might be enacted under its provisions would be submitted to the voters of the city for rejection or approval. This was a broad and liberal provision for home rule. But, enticing and advantageous as it was, it proved to be a stumbling block to the charter success. In Chicago, as in every large city, there are troublesome phases of saloon regulation, and no sooner was the charter problem taken up for solution than these problems presented themselves. After much consideration and many plans and compromises to satisfy all interests in the convention, the state legislature refused to permit a submission of the necessary questions to the voters.

When all is said and done, Chicago is simply in the position of having attempted to draft a charter in harmony with the constitutional amendment and secure its adoption. That it failed of adoption is not surprising as such things go. It is especially not surprising when all the disturbing and conflicting factors entering into the contest are taken into consideration. It was defeated, to be sure, but it is not a final defeat, for to-day, or to-morrow, or at any time in the future, a new charter can be prepared and submitted to the voters for their approval or rejection. And this proceeding can be repeated until a satisfactory organic law for the government of the city is secured.